

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

* * * * *

CLAIMANT: Thomas P. Baur

CASE 43B-0725-R-2022
43B 114711-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following remarks:

SOURCE NAME AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

The issue remark concerning two separate sources was not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

On November 21, 2022 the Court Minutes, Order Entering Default, and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA were issued. On February 27, 2023 the DNRC Memorandum was filed stating that the claimant did not contact the DNRC as directed in the November 21, 2022 Order. The Memorandum states that the issue remark is unnecessary and should be removed. The claimant filed nothing. The Memorandum is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

The issue remark concerning two sources should be removed as unnecessary. The other remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information in the Memorandum and claim file is sufficient to remove the issue remark as unnecessary without any additional proceedings.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via USPS Mail:

Thomas P. Baur
925 E Sunset Ct
Greenwood Village, CO 80121-1214

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 114711-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: THOMAS P BAUR
925 E SUNSET CT
GREENWOOD VILLAGE, CO 80121 1214

Priority Date: MAY 1, 1945

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.08 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 55.00

Source Name: SOUTH FORK TENMILE CREEK

Source Type: SURFACE WATER

Source Name: UNNAMED TRIBUTARY OF SOUTH FORK TENMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	34	3N	14E	SWEET GRASS
Source Name: TENMILE CREEK, SOUTH FORK						
Period of Diversion: APRIL 1 TO NOVEMBER 1						
Diversion Means: HEADGATE						
Ditch Name: WARP DITCHES						
2		SENESW	34	3N	14E	SWEET GRASS
Source Name: TENMILE CREEK, SOUTH FORK						
Period of Diversion: APRIL 1 TO NOVEMBER 1						
Diversion Means: HEADGATE						
Ditch Name: WARP DITCHES						
3		SWSESW	34	3N	14E	SWEET GRASS
Source Name: UNNAMED TRIBUTARY OF TENMILE CREEK, SOUTH FORK						
Period of Diversion: APRIL 1 TO NOVEMBER 1						
Diversion Means: HEADGATE						
Period of Use: APRIL 1 TO NOVEMBER 1						

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		S2SE	34	3N	14E	SWEET GRASS
2	15.00		E2SESW	34	3N	14E	SWEET GRASS
Total:	55.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

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